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Your Home Is Our Business

February 9, 2011

To: Senator Ed Meyer and Representative Richard Roy, Co-Chairs, and members of the Environment Committee

From: Bill Ethier, Chief Executive Officer

Re: RB 832, AAC the Protection of Inland Wetlands and Watercourses

Unfortunately, I cannot join you at today's public hearing. I organized and am hosting an all-day building science and green building seminar today and must be in attendance there to greet over 60 participants. In brief, this is the fifth year in a row a version of this wetlands and watercourses buffer bill has been before you. This year's version is identical to sections 1 to 4 of SB 123 (File No. 190) from last year, and **we again strongly oppose this unnecessary and very poorly worded legislation. We urge you to not pass RB 832.**

The HBA of Connecticut is a professional trade association with 1,100 member firms statewide, employing tens of thousands of Connecticut citizens. Our members, all small businesses, are residential and commercial builders, land developers, home improvement contractors, trade contractors, suppliers and those businesses and professionals that provide services to our diverse industry. Our members build 70% to 80% of all new homes and apartments in the state each year.

Summary: **We strongly oppose RB 832 because it unnecessarily expands the jurisdiction of local wetland commissions to control more activity on more private property. Its language is vague and confusing. It creates more uncertainty not needed by private property owners, businesses, and those trying to build housing and other economic developments. The bill defies science and destroys all sense of balance with property rights and the economic needs of society. It's an unwieldy overreach and we urge you to reject it.**

RB 832 is an unnecessary expansion of local wetland authority because:

1. **The way CT defines wetlands creates a built-in regulatory barrier to most harm that could come to truly well-functioning and valuable wetlands.** The definition of wetlands in CT is already the most expansive definition in the nation. The federal definition of wetlands under sec. 404 of the U.S. Clean Water Act has generated much controversy and is the subject of much debate and litigation nationally. Yet, CT's definition of wetlands under our state statute covers more than twice the land area of the federal definition.
2. **The existing inland wetlands and watercourses act already works very well to protect our rivers, streams and wetlands.** UConn's CLEAR office has produced statewide research showing the development cover trends in riparian

areas of 100 and 300 feet next to watercourses. While there are some issues with the research methodology, the research shows there has been little increase in development cover in the 100 feet next to the state's watercourses.

3. **The existing law is extremely broad in scope and local wetlands agencies have consistently demonstrated their willingness and ability to aggressively use current law to deny and restrict regulated activities near wetlands and watercourses.** Even the CT Council on Environmental Quality acknowledges this by stating on January 4, 2010, "Connecticut's inland wetlands appear to be well protected by most cities and towns, but improvements should be made in two specific areas. This was the conclusion of the Council … when it examined the latest wetlands data at a recent meeting." The two areas the Council identified for improvement are the training of local wetlands commissions and their reporting of permit approvals to DEP, neither of which are addressed by RB 832.

SB 832 creates more control over private property affecting not just new development but also hundreds of thousands of existing home owners who may want to do something in their own backyards. CT has well over 5,000 miles of watercourses and hundreds of thousands of acres of wetlands. Everyone owning property within 100' of all of that will be affected by the confusing language of RB 832.

RB 832 creates new vague language that will disrupt current understanding of the already very protective law: The new definition of "natural vegetation" is unclear. At lines 66-67, does "naturally occurring shrubs, trees or other plants" include naturally occurring invasive species that perhaps should be removed? Does it mean a tree or a shrub in someone's backyard cannot be cut or even trimmed without getting permission from the local wetlands agency? Does the exclusion of "lawns or manicured grass areas" from naturally occurring plants mean that landscaped areas with bushes, ornamentals or other human planted vegetation are considered, somehow, to be natural and, therefore, cannot be cut or trimmed without a permit? What's the difference between "lawns" and "manicured grass areas?" What about vegetable or flower gardens? Section 3 says "when considering an application for a proposed regulated activity, a municipal inland wetlands agency may prohibit the destruction of natural vegetation …." Does this mean you can cut all natural vegetation if it's not connected to a regulated activity? Section 3 appears to provide an exemption for existing residential uses for building decks, outbuildings, etc. but no exemption for other activities, such as cutting a tree or a shrub. How does that make any sense? What do the new terms, "soil and water characteristics" mean?

The use of a "feasible or prudent" alternatives exception in RB 832 turns on its head the use of this concept under current law by presuming an adverse impact from cutting a single tree or bush. Under current law, a feasible and prudent alternatives analysis is required only if a permit is to be granted for a regulated activity that is likely to cause some adverse impact. And, what is meant by "feasible or prudent" alternatives versus current law's "feasible and prudent" alternatives? Many other questions occur to anyone familiar with current law and practice, or for that matter common sense, who reads this tortured language. **As with prior year bills, RB 832 is so poorly worded it will create**

tremendous litigation that will be borne by municipalities and private property owners. This bill does not serve the state well.

By creating essentially a "no touch buffer zone" (contrary to current law's "upland review area" that is not supposed to be a buffer), RB 832 also erroneously assumes a presumption of protection that is devoid of science or balance. Not all wetlands are created equal. Science has long known this and began categorizing the relative values of wetlands in the early 1970s, if not earlier. Especially because of the broad way CT defines wetlands, many so-called "wetlands" in CT provide little, if any, environmental value or other functions typically attributed to wetlands. A 100 foot no-activity buffer next to these biologically unproductive and little or no other value "wetlands" will not accomplish desired environmental goals and makes no sense.

RB 832's expansion of regulatory jurisdiction and uncertainty is not only unjustified but also damaging to the hope of changing this state to one that welcomes economic activity. Its annual introduction into the legislature has and continues to send a strong message to investment capital and economic development to get out of Connecticut. Its perennial consideration erodes the credibility of the Environment Committee as one that is capable of balancing the needs of the environment with the rights of people to use their property and the need for economic development of the state. Wetlands and watercourses in Connecticut are already extremely well protected. Please pursue another course and more important environmental needs.

We strongly urge you to not pass RB 832. Thank you for the opportunity to comment on this legislation.